

Message Text

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ACTION L-03

INFO OCT-01 NEA-10 ISO-00 EB-08 COME-00 H-01 SCS-06
CA-01 PPT-01 HA-05 /036 W
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FM AMEMBASSY DACCA
TO SECSTATE WASHDC 8912
INFO AMEMBASSY ISLAMABAD
AMCONSUL KARACHI

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E.O. 11652: N/A
TAGS: CASC EINV BG US
SUBJECT: FARROKH CAPTAIN CLAIM AGAINST BANGLADESH GOVERNMENT

REFS: A. ISLAMABAD 3176, B. DACCA 2001 AND PREVIOUS, C. STATE
065522, D. STATE 086002, E. DACCA 2209, F. DACCA 2262,
G. STATE 096663

1. SUMMARY: EMBASSY HAS ANSWERED MFA NOTE ON CAPTAIN'S CLAIM PER INSTRUCTIONS IN REF (G). OUR REPLY STATES THAT THE DEPARTMENT WILL NOTIFY CAPTAIN OF THE MFA'S REQUEST FOR INFORMATION ON THE BASIS OF HIS CLAIM. FOR THE MOMENT WE PLAN NO FURTHER ACTION. THE INITIATIVE IS NOW WITH HIM TO PROVIDE BDG THE INFORMATION IT SEEKS. HOWEVER IN ANTICIPATION THAT CAPTAIN WILL CONTINUE TO REQUEST U.S. ASSISTANCE, WE SUBMIT THE FOLLOWING ADDITIONAL INFORMATION AND QUESTIONS CONCERNING THE EFFECT OF THE DATE OF CAPTAIN'S NATURALIZATION ON ASSISTANCE WE MAY PROPERLY RENDER. END SUMMARY.

2. IN ACCORDANCE WITH 10 FAM 988 ET AL CITED IN DEPARTMENT'S REF (D), WE HAVE THUS FAR LIMITED OUR ASSISTANCE IN THIS CASE TO REQUESTS THE BDG TO ENABLE CAPTAIN TO ENTER BANGLADESH TO PROTECT HIS CLAIMS. HE HAVE ALSO
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ASKED BDG TO DEFER FURTHER ACTION CONCERNING THE PROPERTY HE CLAIMS WHICH WOULD PREJUDICE HIS POSITION UNTIL HE HAS A FULL OPPORTUNITY TO PRESENT HIS CASE.

3. EMBOFF REPEATED THESE REQUESTS TO SECRETARY FOR INDUSTRIES MATIUL ISLAM MARCH 31. ISLAM WAS ON THE FLIGHT WITH CAPTAIN FROM KARACHI TO DACCA ON MARCH 7,

1978 WHEN CAPTAIN MADE HIS FIRST ABORTIVE ATTEMPT TO VISIT DACCA THIS YEAR, AND THE TWO HAD A LONG TALK. ACCORDING TO ISLAM, CAPTAIN SAID MEMBERS OF HIS FAMILY HAD TRANSFERRED TO HIM THEIR SHARES OF THE PROPERTY IN BANGLADESH WHICH IS AT ISSUE IN ORDER TO TAKE ADVANTAGE OF THE PROTECTION CAPTAIN'S U.S. CITIZENSHIP OFFERED. ISLAM WAS SKEPTICAL THAT THE PROPERTY SHOULD BE CHARACTERIZED AS AMERICAN-OWNED BUT ACKNOWLEDGED THIS WAS A QUESTION FOR THE LAWYERS. IN RESPONSE TO EMBOFF'S REQUEST, HE SAID BDG WOULD DEFER SALE OF FARROKH CHEMICAL INDUSTRIES-CHITTAGONG, ALTHOUGH A POTENTIAL BUYER, WHO WAS HIGH BIDDER IN A RECENT GOVERNMENT AUCTION OF THE PROPERTY AND OTHER "ABANDONED" PROPERTIES, HAS BEEN TENTATIVELY SELECTED. ISLAM SAID, HOWEVER, THAT THE GOVERNMENT COULD NOT WAIT "INDEFINITELY". HE SAW NO REASON WHY CAPTAIN SHOULD NOT COME TO DACCA TO DISCUSS HIS CLAIM AND THAT HE HAD SO ADVISED THE HOME SECRETARY, WHOSE MINISTRY IS RESPONSIBLE FOR CAPTAIN'S VISA STATUS.

4. EMBASSY HAS RECEIVED COPIES OF LETTERS DATED MARCH 27 FROM CAPTAIN TO SECRETARY OF INDUSTRIES ISLAM AND ADVISER FOR INDUSTRIES JAMAL UDDIN AHMED. LETTERS, WHICH WERE ALSO COPIED TO SECRETARY OF STATE VANCE AND BDG MINISTRY OF FOREIGN AFFAIRS, STATE THAT FAILURE TO SETTLE THE CLAIM COULD PROVOKE THE U.S.A. INTO APPLYING THE HICKENLOOPER AND GLENN AMENDMENTS TO THE U.S. LIMITED OFFICIAL USE

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FOREIGN ASSISTANCE ACT SUSPENDING AID TO NATIONS WHICH EXPROPRIATE PROPERTY OF U.S. NATIONALS; THIS WOULD BE DONE AT THE INITIATIVE OF THE U.S. GOVERNMENT, CONGRESS OR A U.S. COURT. LETTERS STATE FURTHER THAT CAPTAIN HAS "NO INTEREST IN ANY ADVERSARY PROCEEDING" AND WANTS AN "AMICABLE" SETTLEMENT WITH THE MINISTRY OF INDUSTRIES.

5. WE WOULD APPRECIATE FURTHER GUIDANCE FROM THE DEPARTMENT ON THE FACILITATIVE ASSISTANCE WE MAY PROPERLY GIVE CAPTAIN BY VIRTUE OF HIS U.S. CITIZENSHIP. A CHORONOLOGY OF EVENTS BASED ON A CONVERSATION BETWEEN THE EMBASSY'S FORMER ECON OFFICER AND CAPTAIN IN DACCA ON JULY 18, 1975 AND OTHER SOURCES FOLLOW:

1962 -- THE CAPTAIN FAMILY, INCLUDING FARROKH CAPTAIN, ALL PAKISTANI CITIZENS, ACQUIRED TWO CHEMICAL PLANTS. ONE IN DACCA AND ONE IN CHITTAGONG.

FEBRUARY 21, 1971 -- FOUR MEMBERS OF THE CAPTAIN FAMILY TRANSFERRED THEIR INTEREST IN THE CHITTAGONG AND DACCA CHEMICAL PLANTS TO FARROKH CAPTAIN FOR A CONSIDERATION OF 1.1 MILLION RUPEES PAYABLE IN CASH

OR SHARES OF THE FARROKH COMPANIES IN PAKISTAN.
(CAPTAIN GAVE THE EMBASSY COPIES OF THIS SALES AGREE-
MENT IN 1975.)

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1972 -- THE NEW GOVERNMENT OF BANGLADESH
NATIONALIZED FARROKH CHEMICAL INDUSTRIES-CHITTAGONG
AS AN "ABANDONED" PAKISTANI PROPERTY AND ASSUMED OPERA-
TION OF THE PLANT.

FAMBRUARY 26, 1978 -- CAPTAIN BECAME A NATURALIZED
CITIZEN OF THE UNITED STATES (REF C). (CAPTAIN TOLD
THE EMBASSY IN 1975 THAT HE WAS A NATURALIZED CITIZEN
AS EARLY AS FEBRUARY 21, 1971 WHEN HE ACQUIRED HIS
RELATIVES' SHARES IN THE CHITAGONG AND DACCA PROPERTIES.)

1974 -- THE BDG DECLARED THE FARROKH CHEMICAL
INDUSTRIES-DACCA PLANT ABANDONED PROPERTY, NATIONALIZED
IT AND SOLD IT TO PRIVATE BANGLADESHI BUYERS.

MARCH 10, 1978 -- ARTICLES IN DACCA PRESS REPORTED
BDG MINISTRY OF INDUSTRIES ANNOUNCEMENT THAT FARROKH
CHEMICAL INDUSTRIES-CHITTAGONG AND OTHER SPECIFIED ABAN-
DONED PROPERTIES WOULD BE SOLD TO PRIVATE BUYERS.

6. THIS CHRONOLOGY RAISES THE FOLLOWING QUESTIONS:

(1) SINCE CAPTAIN DID NOT BECOME A U.S. CITIZEN
UNTIL AFTER FARROKH CHEMICAL INDUSTRIES-CHITTAGONG
WAS NATIONALIZED, DID HIS CLAIM AGAINST THE BDG AS A
PAKISTANI CITIZEN BECOME A CLAIM FOR PROPERTY OWNED BY
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A U.S. CITIZEN FOR WHICH HE CAN EXPECT FACILITATIVE HELP FROM THE U.S. GOVERNMENT IN PURSUING RECOVERY?

(2) FARROKH CHEMICAL INDUSTRIES- CHITTAGONG IS NOW A BDG-OWNED "ABANDONED PROPERTY" AWAITING SALE TO A PRIVATE BUYER. IF U.S. ASSISTANCE TO CAPTAIN WITH RESPECT TO FARROKH CHEMICAL INDUSTRIES-CHITTAGONG IS APPROPRIATE, SHOULD THE EMBASSY CONTINUE TO ASK THE BDG TO DEFER A SALE OF THE PROPERTY? THE BDG SAYS IT CANNOT DEFER A SALE "INDEFINITELY". CAPTAIN CLAIMS TO BE THE LEGAL OWNER OF THE DACCA AND CHITTAGONG PLANTS AND HAS REQUESTED RECOVERY OF THE PLANTS RATHER THAN COMPENSATION. HE DOES NOT WISH TO PURSUE HIS CLAIM IN COURT.

(3) WHAT U.S. FACILITATIVE ASSISTANCE IS APPROPRIATE WITH RESPECT TO FARROKH CHEMICAL INDUSTRIES- DACCA WHICH WAS NATIONALIZED AND SOLD IN 1974 AFTER CAPTAIN BECAME A U.S. CITIZEN? CAPTAIN ALSO WISHES TO RECOVER THIS PROPERTY. BDG MAY TRY TO ARGUE THAT SINCE CAPTAIN ACQUIRED THIS PROPERTY WHEN HE WAS A PAKISTANI CITIZEN, IT WAS NOT U.S.-OWNED PROPERTY AT THE TIME OF NATIONALIZATION.

7 WE SUGGEST THAT DEPARTMENT EXAMINE THESE QUESTIONS IN ANTICIPATION OF FURTHER REQUESTS FROM CAPTAIN, WHO IS NOW IN THE U.S., FOR USG INTERVENTION. (COPIES OF CAPTAIN'S LETTERS, EMBASSY MEMCON AND SALES AGREEMENT MENTIONED ABOVE ARE BEING POUCHED TO NEA/PAB.) SCHNEIDER

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